



Date: February 26, 2004

In reply refer to: Advisory-0204

Subject: Ethics Awareness in Dealing with Contractors

To: All OCFO Employees

While the Agency's use of contractor employees working in-house has certainly increased, and will probably continue to do so, the laws governing the relationship between the Government and contractors have *not* changed. Recent investigations into Government contractor/employee relationships have resulted in more extensive efforts on the part of management to ensure that all employees are aware of the established ethical standards regarding contractor/employee dealings. In an effort to increase that awareness, this is the second advisory memorandum dealing with procurement integrity.

Below is additional or rephrased practical advice regarding dealing with contractor employees in the Federal workplace.

- Remember that contractor employees are not United States Department of Agriculture (USDA) employees regardless of whether they are *former* USDA employees or they work for a particular contractor whose name has become a "household word" at USDA.
- Respect and adhere to established rules and guidelines that define the employer-employee relationship between contractors and their employees. For example, pressuring the contractor to use "favorite" employees, or insisting on particular personnel actions such as suggesting whom the contractor should hire for a particular project.
- Avoid giving incumbent contractors *unfair* competitive advantage by including its employees in re-competition discussions, or by accidentally allowing the contractor's employees to overhear or gain access to planning information.
- Identify possible conflicts by contractor employees. If it were a crime/conflict of interest to violate Title 18 United States Codes/Standards of Ethical Conduct (appearances of partiality) for a Federal employee to participate in an official matter, we should insist that the contractor ensure the same principles of ethical integrity for their actions.
- Safeguard proprietary, privacy act, and other sensitive and nonpublic information. Release of certain types of information to contractor employees to analyze, create charts and graphs, enter into databases, etc., could violate the Procurement Integrity Law, the Trade Secrets Act, the Privacy Act, or other laws or regulations that could subject the releaser to civil and/or criminal penalties including mandatory removal.

- Be aware of accepting gifts from contractor employees. Even if they work in the Federal workplace, they are still "outside sources" and the rules for gift giving are very different than the rules for gift giving between Federal employees. For example, contractors and their employees may not be solicited to provide or contribute to gifts, where we might be able to do so, from other Federal employees for a retirement gift for another Federal employee.
- Do not require "out of scope" work, personal services, or "inherently Governmental functions." The services that the contractor is required to provide through its employees are set out in the contract. There are no "...and other duties as assigned." When we contract, we give up control and flexibility.
- Remember that certain rights and benefits imputed to a Government employee do not mean that an in-house contractor employee is entitled to the same rights/benefits. For example, while Government employees may be authorized limited use of Government systems for personal use, this limited use rule does not apply to contractor employees.
- Resolve inappropriate appearances created by close relationships between Federal and contractor employees. For example, if a Federal employee develops a close personal relationship with the contractor's site manager, that Federal employee probably should not be assigned or continue as the Contracting Officer Representative.
- Ensure that procedures are in place to have contractor employees always identify themselves in both written and oral communications as contractor employees.
- Attendance at Government-sponsored training or conferences by contractor employees is not permitted unless such terms are specifically within the contract scope.

As Federal employees, we are obligated to set the example by reporting ethical issues promptly and by maintaining high ethical standards. Additional information on procurement integrity can be obtained from Deidre Phillips, OCFO Contracting Officer at 504-426-0274. Also, please review Title 41, United States Code, Section 423 on the United States Department of Agriculture, Office of Ethics web site at <http://www.usda-ethics.net/rules/index.htm>.

If you have questions or encounter situations not covered by this advisory, please contact your supervisor. Supervisors with inquiries should contact the Agency Ethics Office at 504-426-0308 or 504-426-0307.



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